**Madera Electric, Inc. and its alter ego William J. Whaley d/b/a Madera Electric, a sole proprietorship *and* International Brotherhood of Electrical Workers, Local Union No. 570, AFL–CIO.** Case 28–CA–14349

November 7, 1997

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and amended charge filed by the Union on May 1 and June 27, 1997, respectively, the General Counsel of the National Labor Relations Board issued a complaint on July 31, 1997, against Madera Electric, Inc. and its alter ego William J. Whaley d/b/a Madera Electric, a sole proprietorship, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On October 6, 1997, the General Counsel filed a Motion for Default Summary Judgment with the Board. On October 9, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 17, 1997, notified the Respondent that unless an answer were received by September 24, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, Madera Electric, Inc. (Respondent Madera), an Arizona corporation, with its principal office and place of business in Tucson, Arizona, has been engaged in the building and construction industry as a subcontractor performing electrical work. During the 12-month period ending May 1, 1997, Respondent Madera, in the course and conduct of its business operations, purchased and received at its Tucson, Arizona facilities and jobsites, goods and materials valued in excess of $50,000 from other enterprises located in the State of Arizona, including Brown Wholesale Electric Company, which other enterprises had received these goods and materials directly from points outside the State of Arizona.

William J. Whaley d/b/a Madera Electric, a sole proprietorship (Respondent Madera Sole Proprietorship), with its principal office and place of business in Tucson, Arizona, is engaged in the building and construction industry as a subcontractor performing electrical work. During the 12-month period ending May 1, 1997, Respondent Madera Sole Proprietorship, in the course and conduct of its operations purchased and received at its Tucson, Arizona facilities and jobsites, goods and materials valued in excess of $50,000 from other enterprises located within the State of Arizona, including Brown Wholesale Electric Company, Cresent Electric, and Border's Electric, each of which other enterprises had received these goods and materials directly from points outside the State of Arizona.

We find that Respondent Madera and Respondent Madera Sole Proprietorship (collectively, the Respondent) are each employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

About January 15, 1997, Respondent Madera ceased doing business as Madera Electric, Inc., and since about that date, Respondent Madera Sole Proprietorship has continued the business operations of Respondent Madera in basically unchanged form, providing the same service to the same customers, working out of the same business location, and using the same equipment as previously used by Respondent Madera. Based on this conduct, Respondent Madera and Respondent Madera Sole Proprietorship are, and have been at all material times, alter egos of each other, and Respondent Madera Sole Proprietorship has been a disguised continuance of Respondent Madera, and both constitute a single employer within the meaning of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

The employees referred to in the collective-bargaining agreement described below constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

About October 7, 1992, Respondent Madera executed a ''Letter of Assent-A,'' thereby authorizing the Saguaro Chapter, National Electrical Contractors Association (NECA) to act as its collective-bargaining representative for all matters contained in the current or any subsequent approved labor agreement with the Union, which agreement incorporated by reference and bound Respondent Madera to the terms of the Inside Agreement which, by its terms, was effective from April 1, 1994, to March 31, 1997 (the 1994–1997 Inside Agreement), and which agreement was extended through June 30, 1997, by and between the Union and NECA.

Respondent Madera, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the Union's majority status had ever been established under the provisions of Section 9(a) of the Act, such recognition being established by the 1994–1997 Inside Agreement, pursuant to Section 8(f) of the Act.

The 1994–1997 Inside Agreement, in the absence of timely notice of termination by Respondent Madera, automatically bound Respondent Madera to the successor agreement negotiated between the Union and NECA which, by its terms, is effective from June 30, 1997, to March 31, 2000 (the 1997–2000 Inside Agreement).

At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the limited exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

About January 15, 1997, the Respondent withdrew recognition of the Union as the limited exclusive collective-bargaining representative of the unit, and since that date, has failed and refused to continue in effect or to be bound by all the terms and conditions of the 1994–1997 and the 1997–2000 Inside Agreements, including, without limitation, failing and refusing to utilize the Union's hiring hall for employee referrals for employment in the unit. Since about January 15, 1997, the Respondent changed the terms and conditions of the unit, including, without limitation, their wages, rates of pay, medical benefits, retirement benefits, vacation pay, training, overtime compensation, and other benefits of the unit as set forth in the 1994–1997 and the 1997–2000 Inside Agreements, and has failed and refused, and continues to fail and refuse to abide by, or adhere to, these agreements, by failing to apply wages, hours, and other terms and conditions of employment as set forth in these agreements, to the unit employees of the Respondent. These subjects relate to rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit and are mandatory subjects of collective bargaining. The Respondent engaged in these acts and conduct unilaterally, without prior notice to the Union, and without having afforded the Union an opportunity to bargain with the Respondent with respect to those acts and conduct and the effects of such acts and conduct.

About January 6, 1997, Respondent Madera terminated employee Anthony Clark, and on January 9, 1997, it terminated employees Mike Mattice, Steve Stebner, and Hyrum Lappalainen, and since those dates, has failed and refused, and continues to fail and refuse, to reinstate them to their former or substantially equivalent positions of employment. The Respondent engaged in this conduct because the employees had joined, supported, or assisted the Union, or engaged in other concerted activities for the purposes of collective bargaining or other aid and protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

## CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, or coerced, and is continuing to interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

In addition, by withdrawing recognition from the Union about January 15, 1997, refusing to continue in effect or be bound by the terms and conditions of the 1994–1997 and 1997–2000 Inside Agreements since that date, and by unilaterally changing the terms and conditions of the unit, the Respondent has also failed and refused to bargain collectively with the Union as the limited exclusive collective-bargaining representative of the unit, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

By terminating Clark, Mattice, Stebner, and Lappalainen, the Respondent has also discriminated, and is continuing to discriminate, in regard to the hire, tenure, or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to recognize the Union as the limited exclusive collective-bargaining representative of the unit and to comply with the terms and conditions of the 1994–1997 and the 1997–2000 Inside Agreements with the Union.

We shall also order the Respondent to make whole its unit employees for any loss of earnings, benefits, and expenses ensuing from its failure to comply with the terms and conditions of the 1994–1997 and 1997–2000 Inside Agreements or its unilaterally changing the terms and conditions of the unit since about January 15, 1997.

Specifically, we shall order a reinstatement and backpay remedy for those applicants who would have been referred to the Respondent were it not for the Respondent's failure to use the Union's hiring hall for employees referrals for employment in the unit as provided in the 1994–1997 and 1997–2000 Inside Agreements. *J. E. Brown Electric*, 315 NLRB 620 (1994). The Respondent will have the opportunity to introduce evidence on reinstatement and backpay issues at the compliance stage. Id. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, we shall also order the Respondent to restore the employees' medical benefits and make the employees whole, if applicable, by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra. We shall further order the Respondent to make whole its unit employees by making, if applicable, all delinquent, contractually required retirement fund contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[1]

Having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing rates of pay, vacation pay, training, and overtime compensation, we shall also order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Anthony Clark, Mike Mattice, Steve Stebner, and Hyrum Lappalainen, we shall order the Respondent to offer the discriminatees full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also be required to remove from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

## ORDER

The National Labor Relations Board orders that the Respondent, Madera Electric, Inc. and its alter ego William J. Whaley d/b/a Madera Electric, a sole proprietorship, Tucson, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from International Brotherhood of Electrical Workers, Local Union No. 570, AFL–CIO as the limited exclusive collective-bargaining representative of the appropriate unit or failing or refusing to continue in effect or to be bound by all the terms and conditions of the 1994–1997 and the 1997–2000 Inside Agreements, including, without limitation, the provisions relating to use of the hiring hall for employee referrals for employment in the unit, wages, hours, rates of pay, medical benefits, retirement benefits, vacation pay, training, and overtime compensation. The appropriate unit consists of:

> The employees referred to in the collective-bargaining agreements between International Brotherhood of Electrical Workers, Local Union No. 570, AFL–CIO and the Saguaro Chapter, National Electrical Contractors Association (NECA) effective from April 1, 1994, to March 31, 1997 (the 1994–1997 Inside Agreement), and extended through June 30, 1997, and from June 30, 1997, to March 31, 2000 (the 1997–2000 Inside Agreement).

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(b) Terminating employees or failing or refusing to reinstate them to their former or substantially equivalent positions of employment because they join, support, or assist the Union, or engage in other concerted activities for the purposes of collective bargaining or other aid and protection, or in order to discourage employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union as the limited exclusive collective-bargaining representative of the unit and comply with the terms and conditions of the 1994–1997 and the 1997–2000 Inside Agreements with the Union.

(b) Make whole its unit employees for any loss of earnings, benefits, and expenses ensuing from its failure to comply with the terms and conditions of the 1994–1997 and 1997–2000 Inside Agreements or its unilaterally changing the terms and conditions of the unit since about January 15, 1997, in the manner set forth in the remedy section of this decision.

(c) Offer immediate and full reinstatement to those applicants who would have been referred to the Respondent were it not for the Respondent's failure to use the Union's hiring hall for employee referrals for employment in the unit, and make them whole, with interest, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of the Order, offer Anthony Clark, Mike Mattice, Steve Stebner, and Hyrum Lappalainen full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Make Anthony Clark, Mike Mattice, Steve Stebner, and Hyrum Lappalainen whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(f) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges, and within 3 days thereafter notify Anthony Clark, Mike Mattice, Steve Stebner, and Hyrum Lappalainen in writing that this has been done and that the discharges will not be used against them in any way.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in Tucson, Arizona, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 1, 1997.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 7, 1997

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| William B. Gould IV, | Chairman |
| Sarah M. Fox, | Member |
| John E. Higgins, Jr., | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from International Brotherhood of Electrical Workers, Local

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

Union No. 570, AFL–CIO as the limited exclusive collective-bargaining representative of the appropriate unit or fail or refuse to continue in effect or to be bound by all the terms and conditions of the 1994–1997 or the 1997–2000 Inside Agreements. The appropriate unit consists of:

> The employees referred to in the collective-bargaining agreements between International Brotherhood of Electrical Workers, Local Union No. 570, AFL–CIO and the Saguaro Chapter, National Electrical Contractors Association (NECA) effective from April 1, 1994, to March 31, 1997 (the 1994–1997 Inside Agreement), and extended through June 30, 1997, and from June 30, 1997, to March 31, 2000 (the 1997–2000 Inside Agreement).

WE WILL NOT terminate employees or fail or refuse to reinstate them to their former or substantially equivalent positions of employment because they join, support, or assist the Union, or engage in other concerted activities for the purposes of collective bargaining or other aid and protection, or in order to discourage employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize the Union as the limited exclusive collective-bargaining representative of the unit and comply with the terms and conditions of the 1994–1997 and the 1997–2000 Inside Agreements with the Union.

WE WILL make our unit employees whole for any loss of earnings, benefits, expenses ensuing from our failure to comply with the terms and conditions of the 1994–1997 and 1997–2000 Inside Agreements or our unilaterally changing the terms and conditions of the unit since about January 15, 1997.

WE WILL offer immediate and full reinstatement to those applicants who would have been referred to us were it not for our failure to use the Union's hiring hall for employee referrals for employment in the unit, and we will make them whole, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer Anthony Clark, Mike Mattice, Steve Stebner, and Hyrum Lappalainen full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Anthony Clark, Mike Mattice, Steve Stebner, and Hyrum Lappalainen whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharges, and WE WILL within 3 days thereafter notify Anthony Clark, Mike Mattice, Steve Stebner, and Hyrum Lappalainen in writing that this has been done and that the discharges will not be used against them in any way.

MADERA ELECTRIC, INC. AND ITS ALTER EGO WILLIAM J. WHALEY D/B/A MADERA ELECTRIC, A SOLE PROPRIETORSHIP